

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

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UNITED STATES OF AMERICA

v.

KIM DOTCOM, et al.,

Defendants

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)  
) The Honorable Liam O'Grady  
)  
)  
) Criminal No. 1:12-CR-3  
)  
)  
)

**MOTION OF SPECIALLY APPEARING DEFENDANT AND  
INTERESTED PARTY MEGAUPLOAD LIMITED TO WITHDRAW AS MOOT  
(1) ITS MOTION TO FILE UNDER SEAL, AND (2) ITS MOTION TO UNSEAL**

Specially appearing defendant Megaupload Limited ("Megaupload") respectfully moves this Court to withdraw as moot Megaupload's Motion to File Under Seal Portions of [Proposed] Supplemental Brief Regarding Rule 41(g) Hearing (Dkt. 154) and its Motion to Unseal Search Warrant Materials (Dkt. 153-3) which was deemed filed *nunc pro tunc* as of January 2, 2013 earlier today (Dkt. 156). In support of its motion, Megaupload states:

1. On January 2, 2013, Megaupload filed a Motion for Leave to File a Supplemental Brief Regarding Rule 41(g) Hearing and Motion to Unseal Search Warrant Materials. (Dkt. 153.) Attached to that motion, Megaupload submitted a [Proposed] Supplemental Brief Regarding Rule 41(g) Hearing (Dkt. 153-2) and a [Proposed] Motion to Unseal Search Warrant Materials (Dkt. 153-3.)

2. The [Proposed] Supplemental Brief Regarding Rule 41(g) Hearing quoted from the search warrant materials that were the subject of the [Proposed] Motion to Unseal.

3. At the time, Megaupload believed in good faith that the quoted search warrant materials were only partially unsealed. A diligent search of PACER revealed no indication that

the warrants had been fully unsealed. And when Megaupload inquired of the Government on January 2, 2013 whether the Government objected to the unsealing of those materials, the Government responded: “I have asked our folks working on the 41(g) stuff to look into it.”

4. Thus, out of an abundance of caution, Megaupload filed a Motion to File Under Seal (Dkt. 154) those portions of the proposed supplemental brief that quoted the search warrant materials, and filed a corresponding redacted version of its proposed supplemental brief through PACER (Dkt. 153-2).

5. Additionally, Megaupload sought permission to move to unseal the search warrant materials (Dkt. 153) attaching its proposed motion to unseal (Dkt. 153-3). The Court granted Megaupload the requested leave earlier today (Dkt. 156) and deemed Megaupload’s Motion to Unseal to be filed *nunc pro tunc* as of January 2, 2013.

6. Through the Government’s opposition, filed on January 11, 2013 (Dkt. 155), and the unsealing order attached thereto (Dkt. 155-1), Megaupload learned that the Court already had unsealed the warrant materials quoted in Megaupload’s proposed supplemental brief (153-2), mooted the need to file that brief under seal, and further mooted the need to unseal the search warrant materials.

**CONCLUSION**

Accordingly, in the interest of making court documents available to the public, Megaupload respectfully requests that the Court grant Megaupload's request to withdraw both its motion to file under seal (Dkt. 154) and Motion to Unseal Search Warrant Materials (Dkt. 153-3), and further requests that the Court direct the clerk's office to substitute the unredacted version of Megaupload's proposed supplemental brief regarding Rule 41(g) hearing for the redacted version that was electronically filed (Dkt. 153-2).

Respectfully submitted,

/s/ Heather H. Martin

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 15, 2013 the foregoing **MOTION OF SPECIALLY APPEARING DEFENDANT AND INTERESTED PARTY MEGAUPLOAD LIMITED TO WITHDRAW AS MOOT 1) ITS MOTION TO FILE UNDER SEAL AND 2) ITS MOTION TO UNSEAL** was filed and served electronically by the Court's CM/ECF system upon all registered users.

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